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US VC PARTNERS LP and US VC PARTNERS

10 GP, LLC

11
12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA
15
16 SAN JOSE DIVISION

17 US VC PARTNERS LP and US VC
PARTNERS GP, LLC

18 Plaintiffs,

19 vs.

20 FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for Silicon
21 Valley Bank

22 Defendant.

CASE NO. 5:25-cv-3725

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff US VC Partners LP (“USVCP”) and US VC Partners GP, LLC (“USVCP-GP”)
2 (in its capacity as the general partner of USVCP) (collectively, “Plaintiffs”) bring this Complaint
3 against Defendant Federal Deposit Insurance Corporation (“FDIC”) and allege as follows:

4 **INTRODUCTION**

5 1. President Franklin D. Roosevelt, in his first-ever “fireside chat,” assured the nation
6 that “it is safer to keep your money in a reopened bank than it is to keep it under the mattress.”
7 Shortly thereafter, Roosevelt signed the Banking Act of 1933, officially establishing the FDIC.
8 Complex as federal banking regulations may be, the FDIC’s core directive was straightforward:
9 “to maintain stability and public confidence in the nation’s financial system.” A critical way the
10 FDIC maintains that public confidence is through its powers as receiver, vested via 12 U.S.C. §
11 1821 *et seq.* Those receivership powers provide Americans with a simple proposition: forego
12 one’s mattress, bank with an FDIC insured depository institution and, should it fail, the FDIC will
13 return what is rightfully yours.

14 2. At least, that is how it is supposed to work. But in the wake of Silicon Valley
15 Bank’s (“SVB”) collapse in 2023, FDIC has done the opposite. It has elected to hold hostage
16 approximately \$2,500,000 in deposits belonging to an American company—USVCP—
17 constituting proceeds from various payments made to USVCP from two third-party businesses
18 (the “Account Funds”). It is doing so without legal justification.

19 3. That the Account Funds were intended for and belong to USVCP is not credibly in
20 dispute. The funds reflect payments *to* USVCP from third party businesses. Both of those
21 businesses made those payments to USVCP to resolve contractual or other financial obligations,
22 all of which are documented. One of the businesses originating its payments to USVCP is now
23 dissolved; the other made its disbursements to USVCP in the context of a bankruptcy, from which
24 it has now emerged under new ownership, having satisfied its restructuring obligations. In short,
25 so far as they are concerned, both businesses remitted the subject funds to USVCP long ago.
26 Plaintiffs are aware of no individual or entity that has made or claimed any competing ownership
27 over these funds.

1 4. By virtue of the fact that USVCP may be at least 50% indirectly owned by entities
2 that are currently subject to the U.S. sanctions regime, the funds sent to USVCP were flagged for
3 review by SVB's internal Office of Foreign Asset Control ("OFAC") interdiction software, which
4 detected a possible connection between USVCP and an individual listed on OFAC's List of
5 Specially Designated Nationals and Blocked Persons ("SDN List"). As a result, SVB placed the
6 Account Funds into four separate blocked accounts ("Blocked Accounts")—one for each of the
7 four payments made by these businesses to USVCP. On information and belief, SVB's practice
8 was both unnecessary and in error, as banking practice allows such blocked funds to be comingled
9 in a single account.

10 5. Due to SVB's OFAC block, which remains in effect, the Account Funds have been
11 sitting at SVB for over four years. During that time, Plaintiffs and SVB maintained a consistent
12 dialogue about the status of USVCP's funds, always with the understanding and explicit assurance
13 from SVB that these funds did in fact belong to USVCP. For instance, SVB has provided
14 USVCP's representatives with interest income information so that USVCP could file any required
15 state and federal income tax returns on the proceeds of the interests earned on the Account Funds.
16 At Plaintiffs' direction, SVB even agreed (one day before entering receivership) to transfer the
17 Account Funds to a separate blocked account held by USVCP at Signature Bank, pursuant to
18 permission under a specific OFAC license (the "OFAC License").

19 6. When USVCP's representatives initially requested these funds be transferred
20 pursuant to the OFAC License to its account at Signature Bank, SVB incorrectly resisted out of an
21 abundance of caution. In 2023, however, after re-review of the existing OFAC License permitting
22 such transfers, SVB agreed to transfer the Account Funds to a blocked account at Signature Bank.
23 The transfer would have been finalized had SVB not entered receivership.

24 7. Upon SVB's entering receivership, USVCP's representatives promptly resubmitted
25 its request to FDIC that the Account Funds be transferred to another bank of its choosing for safe
26 keeping, consistent with applicable law and the same OFAC License. In essence, USVCP's
27 representatives asked FDIC to do what SVB had already agreed to do. Instead, FDIC demurred
28 and delayed, sometimes taking months to respond to Plaintiffs' queries as to the status of its funds.

1 USVCP representatives sent many emails and numerous times offered calls to FDIC, with no
2 substantive response. Then, 18 months later and out of the blue, FDIC issued a “claims denial,”
3 purporting to inform USVCP that it had no right to its Account Funds.

4 8. FDIC’s determination is arbitrary, capricious, ignores material facts, and is
5 fundamentally unsound and unfair for a number of reasons. *First*, FDIC ignores material facts,
6 including that the Account Funds were deposited in Blocked Accounts created specifically for the
7 benefit of USVCP, and that the communications between Plaintiffs and SVB over the years have
8 consistently reflected the parties’ intent, agreement, and mutual understanding that these accounts
9 belonged to USVCP. FDIC further ignores that all the documents used to establish and track the
10 Account Funds—transfer instructions and internal block reports—unambiguously listed USVCP
11 as the sole payee and beneficiary of the Account Funds. FDIC ignores these facts, and others, and
12 relies instead solely and definitively on the fact that the funds were initially blocked by virtue of
13 SVB’s internal OFAC interdiction software.

14 9. *Second*, OFAC granted to USVCP-GP a license explicitly authorizing the transfer
15 of funds blocked by interdiction software intended for USVCP to other consolidated bank
16 accounts. By refusing to transfer these funds immediately when requested pursuant to the OFAC
17 License, SVB created the conditions to put the Account Funds at risk. But more importantly, the
18 existence of the OFAC License acknowledges the reality that in light of the impact of the relevant
19 sanctions, USVCP should have the ability to consolidate its blocked funds into consolidated
20 accounts. Ultimately, SVB even acknowledged that it was permitted to transfer USVCP’s Account
21 Funds, and was in the process of doing so when its historic failure truncated that effort. USVCP
22 should not be prejudiced by SVB’s delay and ultimate collapse. Moreover, as the blocked funds
23 will remain blocked, FDIC has no principled reason for denying USVCP representatives’ request
24 to effectuate the transfer according to the OFAC License. Indeed, that FDIC has
25 contemporaneously permitted more than \$54 million of other such transfers of USVCP’s blocked
26 assets in other circumstances pursuant to the same OFAC License highlights the arbitrary nature
27 of FDIC’s conduct here.

28

10. *Third*, FDIC’s belated determination concerning the owners of the Blocked Accounts is fundamentally unfair because neither of the businesses that paid the relevant funds to USVCP still exist in the same form. Identifying these dissolved entities as the owners of the Account Funds would effectively give FDIC a windfall over the funds that all relevant parties—the payees, the holding bank, and Plaintiffs—and the documentary record confirm belong to USVCP.

11. FDIC’s attempts to ignore USVCP as the owner of the Account Funds are baseless, arbitrary, capricious, and inequitable. Plaintiffs have attempted to resolve these issues short of the intervention of this Court, including by requesting calls and a tolling of relevant statutory periods to allow for further evidence and negotiation, to no avail. For these and other reasons alleged herein, it now asks this Court to reverse FDIC’s determination and find that USVCP has valid claims over the Account Funds.

12. To be clear, the relief requested by Plaintiffs complies with all law and is permitted by the OFAC License. Plaintiffs do not seek that any of the Account Funds be unblocked or accessed. Instead, they simply seeks that USVCP’s claim to these funds be recognized, and that these assets be transferred to blocked accounts at a bank of USVCP’s choosing, consistent with the permissions of the OFAC License.

PARTIES

13. Plaintiff USVCP is a multi-stage, technology investment fund that when active invested in equity and debt securities of domestic and international businesses.

14. Plaintiff USVCP-GP is the general partner of USVCP. USVCP-GP is a limited liability company organized under the laws of Delaware, and its principal place of business is 120 East Palmetto Park Road, Suite 405, Boca Raton, FL 33432. USVCP-GP is 100% owned by United States citizens. No entity or persons on OFAC’s SDN List or any entity blocked pursuant to OFAC’s 50% Rule (described *infra*) has any interest in, or control over, USVCP-GP.

15. Defendant FDIC is an agency of the United States government charged by law with, among other duties, administering the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. §

1 1811 et seq., and the federal bank deposit insurance system. USVCP sues FDIC in this action in
2 its capacity as the Receiver for SVB.

3 **RELEVANT NON-PARTIES**

4 16. Renova Group a/k/a JSC Renova Group of Companies (“Renova”) is a
5 conglomeration of asset management companies and direct and portfolio investment funds. On
6 April 6, 2018, OFAC imposed sanctions on Renova and its co-founder following the
7 implementation of Executive Order 13662 and added each of them to the SDN List. The sanctions
8 imposed by OFAC prohibit dealing in (or “block”) SDNs’ assets that are in the United States, or
9 by a U.S. person (wherever located). Under OFAC’s 50% Rule, 31 C.F.R. § 589.411, OFAC
10 deems any entity in which one or more SDNs have a 50% or greater ownership interest to be
11 sanctioned or “blocked” as if that entity itself were an SDN.

12 17. Renova Innovation Technologies, Ltd. (“RIT”) is the sole limited partner of
13 USVCP. Based on historical information in its management file, USVCP’s manager believed that
14 Renova may be the ultimate beneficial owner of RIT, though RIT has disputed this fact.
15 Regardless of this disagreement, USVCP’s control parties have always treated USVCP as an entity
16 that may be indirectly owned 50% or more by an SDN and have reported the same to OFAC.
17 Accordingly, consistent with OFAC’s 50% Rule, USVCP is blocked as if it were itself an SDN.

18 18. US VC Partners Management, LLC (“USVCP Management”) is an investment
19 company with its principal place of business at 120 East Palmetto Park Road, Suite 405, Boca
20 Raton, FL 33432. USVCP is a limited liability company organized under the laws of Delaware.
21 USVCP Management is 100% owned by United States citizens. No SDN or any entity blocked
22 pursuant to the 50% Rule has any direct or indirect ownership interest in, or control over, USVCP
23 Management.

24 19. Immutable Systems, Inc. (“Immutable”) was an entity based in Mountain View,
25 CA that provided cloud computing services. On June 21, 2018, Immutable filed a Certificate of
26 Dissolution in the Office of Secretary of State of the State of Delaware.

27 20. Gawker Media Group Inc., and Gawker Media LLC (collectively, “Gawker”) were
28 online media companies based in New York City, New York. In June 2016, Gawker filed for

Chapter 11 bankruptcy. In late 2019, the plan administrator in Gawker’s bankruptcy dissolved Gawker, closed its accounts at SVB, represented to the bankruptcy court that all distributions to creditors were made according to the chapter 11 plan, and obtained a final decree closing the bankruptcy cases and terminating the plan administrator’s engagement. In 2023, Gawker was purchased by Meng Ru Kuok, the founder of Singapore-based venture capital firm Caldecott Music Group.

21. Signature Bank was a New York-based full-service commercial bank with its principal place of business at 565 Fifth Avenue, New York, New York. Signature Bank was unaffiliated with SVB. Between 2019 and 2023, USVCP endeavored to have its Account Funds at SVB transferred to its Signature Bank account. Shortly after SVB’s failure, on March 12, 2023, Signature Bank also failed—it was closed by the New York State Department of Financial Services, and FDIC was named Receiver. At the same time that FDIC denied USVCP’s claim and transfer of the Account Funds, FDIC permitted the transfer of more than \$54 million of USVCP’s blocked assets held at Signature Bank pursuant to the OFAC License.

JURISDICTION AND VENUE

22. This action arises under the Constitution and law of the United States, including, without limitation, the FDI Act, 12 U.S.C. § 1811, *et seq.*, as amended. The Court has original “arising under” jurisdiction over the asserted federal law claims pursuant to 28 U.S.C. § 1331.

23. FDIC is subject to suit in this Court. The FDI Act provides that FDIC may “sue and be sued, and complain and defend, by and through its own attorneys, in any court of law or equity, State or Federal.” 12 U.S.C. § 1819(a).

24. Venue is proper under 28 U.S.C. § 1391(b) and § 1391(e)(1), as the Account Funds were held at SVB, which was located in this District prior to the bank’s failure and entry into receivership. Venue is also proper under 12 U.S.C. § 1821(d)(6)(A), which provides, within 60 days of the disallowance of a claim by FDIC in its capacity as receiver under 12 U.S.C. § 1821(d)(5)(A)(i), a claimant may file suit on such claim “in the district or territorial court of the United States for the district within which the depository institution’s principal place of business is located or the United States District Court for the District of Columbia (and such court shall

1 have jurisdiction to hear such claim).” Venue is also proper under 12 U.S.C. § 1821(f)(4), which
 2 provides that a final determination of the FDIC regarding a claim for insurance coverage “shall be
 3 a final agency action reviewable . . . by the United States district court for the Federal judicial
 4 district where the principal place of business of the depository institution is located.” Here, the
 5 principal place of business for SVB was located in this District.

6 **DIVISIONAL ASSIGNMENT**

7 25. This action should be assigned to this Court’s San Jose Division. Under Rule 3-2
 8 of this Court’s Civil Local Rules, “[a] civil action arises in the county where . . . a substantial part
 9 of the property that is the subject of the action is situated,” and all civil actions that arise in the
 10 County of Santa Clara “shall be assigned to the San Jose Division.”

11 26. SVB was headquartered in the County of Santa Clara, and a substantial part of the
 12 property that is the subject of the action is situated in the County of Santa Clara. This action
 13 therefore arises in the County of Santa Clara and “shall be assigned to the San Jose Division.”

14 **FACTUAL BACKGROUND**

15 **A. USVCP’s Business**

16 27. USVCP is a technology investment fund that when active invested in equity and
 17 debt securities of domestic and international businesses. USVCP is an American entity. In light
 18 of the reporting of USVCP as a blocked entity, it has no ongoing business activities other than
 19 attempting to liquidate its assets and wind down operations, pursuant to an applicable OFAC
 20 License.

21 28. USVCP acts by and through its general partner, USVCP-GP and its management
 22 company, USVCP Management.

23 29. As described above, USVCP-GP believes that USVCP’s sole limited partner, RIT,
 24 may be majority beneficially owned by Renova, which is an SDN. USVCP has also historically
 25 reported this understanding to OFAC. Pursuant to OFAC’s 50% Rule, an entity owned—directly
 26 or indirectly—50% or more by an SDN is treated as if it were itself an SDN. This rule allows
 27 OFAC to place restrictions on the property of U.S. companies by virtue of the fact that those
 28 companies are indirectly owned by individuals or entities designated by OFAC as SDNs. Given

the reporting of USVCP's ownership information to OFAC, the 50% Rule applies to USVCP's property. Accordingly, funds paid to USVCP must be placed into blocked accounts at U.S. depository institutions.

B. Gawker's and Immutable's Payments to USVCP

30. As of 2018, USVCP was an investor in both Gawker and Immutable. Both of these companies owed certain investment obligations to USVCP.

31. Between October 2018 and August 2019, Gawker and Immutable sent, in the aggregate, approximately \$2.4 million dollars to USVCP in satisfaction of those obligations. Those payments were as follows:

32. Transfer 1 (Immutable). On October 10, 2018, the CFO of Immutable submitted to SVB a cashier's check in the amount of \$364,502.15 to payee USVCP. Immutable's cashier's check was labeled with a memo reading, "Immutable Systems Investor Payout," and Immutable instructed SVB to mail the check to the offices of the General Counsel accepting payment on behalf of USVCP.

33. Transfers 2 and 3 (Gawker). On May 23, 2019, Gawker made two separate wire transfers of \$805,621.90 and \$750,000 to USVCP's blocked account at Signature Bank. Both wire transfers were initiated by a chapter 11 bankruptcy plan administrator in connection with Gawker's liquidation.

34. Transfer 4 (Gawker). On August 29, 2019, a representative from AlixPartners, the financial advisor for Gawker's chapter 11 case, alerted USVCP about a final distribution to be made to USVCP in the amount of \$513,157.87 in connection with Gawker's dissolution.

35. All four transfers were automatically blocked by SVB's OFAC interdiction software and placed in individual blocked accounts at SVB for USVCP's benefit. On information and belief, this was both unnecessary and in error, as banking practice allows such blocked funds to be comingled in a single account. Both Immutable and Gawker closed their SVB accounts after making their payments to USVCP.

36. Today, Immutable no longer exists. In late 2019, the plan administrator in Gawker's bankruptcy case dissolved Gawker and represented to the bankruptcy court that all

distributions to creditors (including USVCP) were made according to the chapter 11 plan. Gawker no longer exists in the same form that it did when it initiated its three wire transfers to USVCP, having emerged from bankruptcy under new ownership and having satisfied its chapter 11 plan.

C. SVB Correctly Treats the Account Funds As USVCP's and Assures USVCP the Funds Are Safe

37. While USVCP, through its agents, worked with SVB to resolve the OFAC block, SVB agreed to hold the Account Funds in the four segregated Blocked Accounts for the benefit of USVCP. Those Accounts were given account numbers ending in -3346; -3384; -3399; and -3411. Each of the Blocked Accounts was created for the express purpose of holding the funds from the four money transfers from Gawker and Immutable to USVCP.

38. From 2019 to 2023, SVB repeatedly confirmed, in words and in deeds, that although the Account Funds were maintained in the Blocked Accounts, they were safe and belonged to USVCP.

39. On May 15, 2019, for instance, a representative of USVCP wrote to SVB requesting statements showing that the funds “are blocked at SVB *and are noted to belong to US VC Partners LP*.” Neither Mr. Pieter Ott, Sanctions Compliance Officer at SVB, nor any other member of SVB challenged USVCP's request. Instead, Mr. Ott attached a document containing “details on the blocked cashier's check *to beneficiary US VC Partners LP*, and the associated blocked account at SVB.”. The attached document in Mr. Ott's email to USVCP's representative clearly identified USVCP as the “beneficiary” and the “payee” of the cashier's check.

40. On May 23, 2019, in connection with the Gawker wire transfers, a separate representative of USVCP asked Mr. Ott for assistance in facilitating the transfers such that “these funds [would be] settled into a *US VC Partners LP blocked account* at Signature Bank.” That representative also requested that SVB provide “support/detail as to where [the Gawker wires] had been deposited.” In response, Mr. Ott provided attachments in the form of OFAC Blocking Reports, which SVB filed with OFAC, reflecting the “blocked transactions, and the associated block accounts at SVB.” The attached documents again clearly reflected USVCP as the “beneficiary” of these wires.

1 41. Finally, on August 29, 2019, in connection with Gawker’s third wire transfer, a
 2 representative of USVCP instructed SVB to “place the [these funds] into a blocked account at
 3 SVB” *“on behalf of US VC Partners LP”* and to then provide him with the supporting
 4 documentation. In response, Mr. Ott responded with the OFAC block report attachment, which
 5 again clearly showed USVCP as the beneficiary of the blocked funds.

6 **D. USVCP-GP Obtains OFAC License to Transfer Funds from Blocked Accounts**

7 42. On July 1, 2019, USVCP-GP and other related entities filed suit against OFAC in
 8 the United States District Court for the Southern District of New York in connection with OFAC’s
 9 seizure of Plaintiffs’ property and its failure to grant specific licenses for basic access to Plaintiffs’
 10 property. On June 30, 2020, the day before oral argument on OFAC’s motion to dismiss was to
 11 take place, OFAC unilaterally issued two licenses. One of them was the OFAC License described
 12 above, which granted Plaintiffs the power to manage certain of their seized property in the context
 13 of winding down the operations of those investments.

14 43. Among other things, the OFAC License allowed USVCP-GP to “engage in all
 15 transactions ordinarily incident and necessary . . . [to] negotiate and execute the sale, divestment,
 16 and transfer of [its] Blocked Positions and maintain operations, including paying related taxes and
 17 other fees pending divestment.”

18 44. Since receiving the OFAC License, Plaintiffs requested confirmation from OFAC’s
 19 Licensing Division that the OFAC License permitted Plaintiffs to consolidate blocked funds from
 20 numerous disparate bank accounts where cash currently resides into one consolidated account at a
 21 single financial institution for administrative ease. This is the exact scenario USVCP faced at
 22 SVB. As is the case here, Plaintiffs made clear that the request for clarification was not a request
 23 for funds to be unblocked, but merely a request to consolidate blocked accounts for the purpose of
 24 easing their administrative burden and reporting obligations.

25 45. At first, OFAC took the position that each movement of blocked funds from one
 26 account to another may require its own individual license, which would render the “process”
 27
 28

1 resource-consuming and logistically challenging.¹ Given OFAC's position at the time, SVB
2 refused to transfer the Account Funds. USVCP acquiesced to keeping the Account Funds at SVB
3 for the time being, given the parties' common understanding that SVB had opened the Blocked
4 Accounts expressly for its benefit and that the funds were USVCP's property.

5 46. Even though SVB denied USVCP's requests to transfer the Account Funds, it
6 provided USVCP with interest income information regarding all four Blocked Accounts for the
7 express purpose of allowing USVCP to file required income tax reports on the interest earned on
8 the Account Funds. SVB provided the information based on the understanding that the funds held
9 in all four Blocked Accounts belonged to USVCP, and USVCP therefore may have obligations to
10 file tax reports and pay any taxes due in connection with the Account Funds.

11 47. In response to Plaintiffs' formal written request to consolidate funds as part of the
12 OFAC License renewal application in November 2022, OFAC clarified its position that the OFAC
13 License already permitted the consolidation of USVCP's funds in different accounts, and that no
14 additional license was necessary. In short, OFAC clarified that USVCP's request for transfer of
15 the Account Funds was permissible and consistent with the OFAC License.

16 48. After OFAC's renewal of the OFAC License, Plaintiffs again requested
17 confirmation that the OFAC License allowed for the transfer of blocked funds from one bank to
18 another. On December 30, 2022, Alan Christian, Deputy Assistant Director for Licensing at
19 OFAC, confirmed that, "OFAC considers the transfer of blocked funds to blocked accounts held
20 at Signature Bank as activity ordinarily incident and necessary to the authorizations outlined in
21 SECTION 1(b) of License No. MUL-2020-366977-5." OFAC's December 30, 2022 email was
22 merely confirmation of the fact that the OFAC License allowed for the transfer of blocked funds,
23 and did not modify the freedoms conferred by the License in any way. As such, SVB could—
24 should—have initiated the transfer of the Account Funds upon Plaintiffs' first request to do so,
25 long before SVB failed.

26
27 ¹ While OFAC initially took the position that fund transfers might require their own individual
28 licenses, it has since confirmed, in numerous communications to USVCP's representatives and to
its outside counsel, that the same OFAC License permits fund transfers by itself and that no
additional licenses are necessary.

49. On March 9, 2023, SVB finally agreed to initiate the transfer of Account Funds from SVB to USVCP's blocked account at Signature Bank, further demonstrating the understanding of all parties that these funds belonged to USVCP, could be transferred, and should have been transferred to a blocked account at Signature Bank, where USVCP maintained an account.

E. SVB Collapses in March 2023

50. On March 10, 2023, before SVB could carry out USVCP's transfer request, the California Department of Financial Protection & Innovation closed SVB, and FDIC was appointed as the failed-bank's receiver. But for SVB's receivership, USVCP's Account Funds would have been transferred to Signature Bank.

51. Shortly after being appointed, FDIC created the Deposit Insurance National Bank of Santa Clara ("DINB") and FDIC in its corporate capacity and as SVB Receiver then entered into a purchase and assumption agreement that immediately transferred to the DINB the liability for insured deposits of SVB for the first few days after SVB's failure.

52. On Sunday, March 12, 2023, then-U.S. Secretary of the Treasury Janet Yellen, acting on the recommendation of FDIC Board of Directors and the Board of Governors of the Federal Reserve System, invoked the systemic risk exception ("SRE") under 12 U.S.C. § 1823(c)(4)(G). In the Secretary's own words, her action was meant to calm uninsured depositors' fears in order to prevent runs on additional commercial banks and to protect the Nation's banking system from possible collapse by "fully protect[ing] all depositors" who "[would] have access to all of their money starting Monday, March 13." (*See* Press Release, U.S. Dep't of the Treasury et al., Joint Statement by Treasury, Federal Reserve, and FDIC (Mar. 12, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312b.htm>.)

53. The next day, March 13, 2023, the deposit liabilities and related assets that had been conveyed to the DINB were conveyed back to the SVB Receiver, and the SVB Receiver then transferred liability for all deposits—both insured and uninsured—and substantially all assets of SVB to a bridge bank ("Bridge Bank"). OFAC blocked deposits were not transferred to the Bridge Bank.

1 54. On March 26, 2023, the Bridge Bank was placed into receivership. On March 27,
2 FDIC in its corporate capacity and FDIC as receiver for the Bridge Bank entered into a purchase
3 and assumption agreement under which First-Citizens Bank & Trust Company assumed
4 substantially all deposits and assets of the Bridge Bank (which did not include OFAC blocked
5 deposits).

6 **F. USVCP Contacts FDIC to Attempt Fund Transfer**

7 55. After FDIC took over as SVB Receiver, representatives of USVCP repeatedly
8 contacted FDIC in order to move the funds to USVCP's blocked account (at Signature Bank).
9 Between May 2023 and July 2024, USVCP's representatives made countless telephone calls and
10 sent more than fifteen emails to FDIC in an attempt to consolidate the Account Funds and provided
11 copious documentations showing that the Account Funds were held in the Blocked Accounts for
12 the benefit of USVCP.

13 56. In response to this outreach, FDIC sometimes waited weeks or months before
14 responding, and appeared to take the position that SVB's previously issued OFAC block would
15 still prevent the transfer of the Account Funds, even though that position was contradicted by
16 OFAC's own position that the OFAC License permitted such transfer and SVB's initiation of the
17 transfer of the Account Funds in 2023.

18 57. Specifically, on May 16, 2023, a USVCP representative first contacted FDIC to
19 discuss the process of transferring funds from the Blocked Accounts to another bank account
20 pursuant to the OFAC License—a process that was already underway before FDIC took over SVB.
21 USVCP's representative received no response.

22 58. After a follow-up email, FDIC finally replied on May 26, noting that due to FDIC's
23 claims process, "these OFAC claims will need to reside in the appropriate receivership and will be
24 reported through our OFAC process going forward."

25 59. USVCP's representative replied on the same day requesting a call to discuss the
26 transfer of the blocked funds, and reiterated that the OFAC License allowed USVCP to "move
27 blocked funds from one financial institution to a blocked account in another institution."
28

1 60. On June 1, 2023, USVCP's representative and the FDIC team held a phone
2 discussion regarding USVCP's request to move the Account Funds from SVB to a blocked account
3 at another bank. During the call, USVCP received assurance from FDIC that the Account Funds
4 were at FDIC and had been backed by FDIC such that the full value of the funds was available to
5 be claimed. Following the call, USVCP provided FDIC with the OFAC blocking reports and the
6 surrounding communications between it and SVB which, as discussed above, clearly identified
7 USVCP to be the beneficiary of the Account Funds. FDIC said it would respond based on the
8 information.

9 61. On June 27, 2023, USVCP followed up on the phone discussion to request that
10 FDIC provide the claim forms necessary to allow it to file its claim over the Account Funds. FDIC
11 did not reply to this email.

12 62. On July 5, 2023, USVCP followed up again with FDIC and noted that USVCP-GP
13 had received a renewal of the OFAC License, which continued to specifically authorize the transfer
14 of blocked funds to a blocked receiving account. FDIC also did not reply to this email.

15 63. On July 11, USVCP followed up for the third time to request a response from FDIC.

16 64. On July 12, Amanda Jennings at FDIC replied and requested USVCP's
17 representative to provide legal documents authorizing USVCP to act on behalf of Immutable and
18 Gawker. USVCP's representative promptly provided the requested information on the next day,
19 July 13.

20 65. In response, Ms. Jennings at FDIC provided confusing guidance, noting at one point
21 that "[d]ue to the claims process, the OFAC claims will need to reside in the appropriate
22 receivership" and at another point that "FDIC is unable to transfer deposit accounts, from a
23 Receivership, with OFAC holds to an open Financial Institution."

24 66. In response, USVCP's representative further explained that the OFAC License
25 expressly permitted such fund transfers, noting it "explicitly allows for movement of money in
26 circumstances such as this, i.e., from a block at one bank [. . .] to another." USVCP's
27 representative then requested that FDIC get in touch with USVCP's undersigned outside counsel,
28

1 Latham & Watkins LLP (“Latham”), to the extent FDIC took a different position. FDIC did not
2 reply to this email.

3 67. On July 17, 2023, USVCP’s representative followed up “to again request that
4 [FDIC] get us in contact with your legal team as quickly as possible.” FDIC did not reply to this
5 email either.

6 68. In January 2024, USVCP-GP obtained another renewal of the OFAC License. In
7 connection with the license renewal, USVCP’s representative again requested guidance from
8 OFAC concerning whether blocked funds may be transferred to blocked accounts outside of
9 FDIC’s Receivership. In response, Alan Christian, Deputy Assistant Director for Licensing at
10 OFAC, again confirmed that such transfers would be permissible because “OFAC considers [such
11 transfer] as activity ordinarily incident and necessary to the authorizations outlined in Section 1(b)
12 of License No. MUL-2020-36697-8.” OFAC’s confirmation that the OFAC License allowed for
13 the transfer of blocked funds from one bank to another was directly in line with its December 30,
14 2022 email stating the same.

15 69. On May 14, 2024, after not hearing from FDIC for nearly a year, a USVCP
16 representative reached out again to FDIC to reopen discussions regarding the transfer of the
17 blocked funds held at FDIC into USVCP’s corresponding blocked account, now at Mainstreet
18 Bank. In his email, the USVCP representative attached the most recent iteration of the OFAC
19 License, Mr. Christian’s email confirming the permissibility of transferring blocked funds, and a
20 spreadsheet showing the list of account owners.

21 70. On June 5, 2024, USVCP’s representative emailed FDIC asking for its progress
22 and noted that he was “quite certain that [USVCP could] assist with this process if you would
23 engage with us. There is no reason for this to be an adversarial process.” FDIC again did not
24 timely reply to this email.

25 71. On June 14, 2024, FDIC asked USVCP’s representative to provide a contact at
26 MainStreet Bank, and stated it was ready to take the next steps to initiate the transfer of USVCP’s
27 more than \$54 million blocked funds at Signature Bank (which had also failed in March 2023).
28

1 However, FDIC remained unwilling to transfer USVCP's SVB-based Account Funds and provided
2 no guidance on a viable process of transfer.

3 **G. FDIC Wrongly Denies USVCP's Deposit Claim Form, Forcing Suit**

4 72. In August 2024, FDIC finally provided USVCP's representatives with deposit
5 claim forms over its blocked funds at Signature Bank. However, FDIC did not provide the same
6 forms necessary for USVCP to assert its claims over the Account Funds at SVB. In the cover
7 email, FDIC noted that the records provided by SVB showed Gawker and Immutable as the owners
8 of the Blocked Accounts but did not provide further details.

9 73. Since USVCP did not consider SVB's account records to be dispositive in light of
10 the other records indisputably showing USVCP to be the true owner of the Blocked Accounts,
11 USVCP used the Signature Bank claim forms to submit claims over the SVB-based Account Funds
12 on August 23, 2024.

13 74. Over half a year later, on March 5, 2025, FDIC issued a letter denying and
14 disallowing USVCP's claim over the four Blocked Accounts ("Claim Denial Letter") on the
15 ground that "SVB owed no deposit obligation to US VC Partners."

16 75. In reaching this conclusion, FDIC purported to review "account setup forms for
17 each account that were generated by SVB and maintained in the ordinary course of its business,"
18 which "reflected that the account records was [sic.] held in the name of SVB for one of its clients,
19 Immutable Systems or Gawker." FDIC also purported to review the fund transmittal instructions,
20 which "consistently reflected SVB's clients as the originators of attempted transfers to US VC
21 Partners that had been blocked before being presented by SVB to US VC Partners' bank."

22 76. FDIC either ignored or chose not to give weight to any of the additional documents
23 USVCP submitted to FDIC or SVB records and email communications that FDIC could have (and
24 should have) reviewed over the course of two years, including: (1) the fund payment instructions
25 showing USVCP to be the sole payee and beneficiary of the Account Funds; (2) the reports of
26 blocked property that SVB submitted to OFAC; (3) communications between SVB and USVCP's
27 representatives indicating that the Blocked Accounts were set up solely for the benefit of USVCP;
28 (4) the OFAC License, which permitted the USVCP to transfer blocked funds from one bank to

another; and (5) the email from OFAC expressly stating USVCP was authorized to transfer blocked funds from one bank to a blocked account in another bank. These documentations conclusively establish that USVCP was the owner of the Account Funds and that, if not for SVB's delay, these Funds could—would—have been transferred to USVCP's blocked bank account at another bank.

77. FDIC's Claim Denial letter directs USVCP to take steps consistent with 12 U.S.C. §§ 1821(d) and/or (f) if it disagrees with the denial or disallowance of its claim.

78. On April 1, 2025, in an attempt to avoid needless litigation, USVCP contacted FDIC and conveyed its desire to work toward an amicable resolution of its claim via entering into a tolling agreement—one that would preserve USVCP's claims while affording FDIC the opportunity to review the most fulsome set of relevant materials possible. On April 4, 2025, FDIC declined the tolling agreement request, and stated the 60-day deadline to file suit was jurisdictional and thus firm.

79. Accordingly, Plaintiffs filed this action.

FIRST CAUSE OF ACTION

(DE NOVO REVIEW OF CLAIM DISALLOWANCE, 12 U.S.C. § 1821(D)(6))

80. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

81. On August 23, 2024, USVCP, through its representative, timely submitted a deposit claim form.

82. On March 5, 2025, FDIC sent the Claim Denial Letter disallowing USVCP's claim on the basis that "the books and records of SVB reflect no deposit account titled in the name of US VC Partners LP."

83. Under 12 U.S.C. § 1821(d)(6)(A), the Court has *de novo* jurisdiction to determine a plaintiff's claims brought against a failed depository institution for which FDIC is receiver.

84. According to the FDI Regulations outlining the procedures for making insurance/deposit determinations, FDIC generally relies upon a failed depository institution's deposit account records to determine deposit insurance coverage. C.F.R. § 330.5. However,

1 where, as here, “the deposit account records are ambiguous or unclear on the manner in which the
 2 funds are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit
 3 account records of the insured depository institution for the purpose of establishing the manner in
 4 which the funds are owned.” *Id.*

5 85. As set forth herein, in disallowing USVCP’s claim, FDIC made the arbitrary
 6 determination to consider only the “account setup forms” for each of the Blocked Accounts, as
 7 well as the sender information for SVB’s OFAC blocking reports.

8 86. In doing so, FDIC failed to consider other evidence conclusively showing that the
 9 Blocked Accounts were set up specifically for the benefit of USVCP. Such evidence includes,
 10 among other things: (1) communications between USVCP representatives and SVB over the years
 11 consistently reflecting the parties’ understanding that these accounts belonged to USVCP; (2) wire
 12 fund payment instructions listing USVCP as the sole payee and beneficiary of the Account Funds;
 13 and (3) SVB’s OFAC blocking reports showing the same.

14 87. USVCP’s ownership over the Blocked Accounts is further confirmed by the fact
 15 that SVB provided USVCP representatives with interest income information so that USVCP could
 16 pay state and federal income tax on the proceeds of the interests earned on the Account Funds.

17 88. The arbitrary nature of FDIC’s denial of USVCP’s claims is also evinced by the
 18 fact that FDIC has granted similar requests to transfer USVCP’s blocked funds held at another
 19 banking institution—Signature Bank—pursuant to the OFAC License. Indeed, at the same time
 20 that FDIC denied USVCP’s claim and transfer of the Account Funds, FDIC permitted the transfer
 21 of more than \$54 million of USVCP’s blocked assets held at Signature Bank pursuant to the OFAC
 22 License. FDIC has no principled basis for treating the Account Funds held by SVB differently.

23 89. WHEREFORE, Plaintiffs request, pursuant to 12 U.S.C. § 1821, that this Court
 24 hold unlawful and set aside FDIC’s disallowance of USVCP’s claim over the Account Funds.

25 **SECOND CAUSE OF ACTION**

26 **(REVIEW OF FINAL AGENCY DECISION, 12 U.S.C. § 1821(F))**

27 90. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth
 28 herein.

1 91. Pursuant to 12 U.S.C. § 1821(f)(4), “[a] final determination by the Corporation
2 regarding any claim for insurance coverage shall be a final agency action reviewable in accordance
3 with” the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Under the Administrative
4 Procedure Act, the reviewing court must set aside FDIC’s determination if it is found to be
5 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as set forth
6 in 5 U.S.C. § 706.

7 92. FDIC’s denial of Plaintiffs’ claims for insurance coverage was arbitrary and
8 capricious, lacked due process and fair notice, and was in contravention to the Treasury Secretary’s
9 SRE mandate.

10 93. According to the FDI Regulations outlining the procedures for making
11 insurance/deposit determinations, FDIC generally relies upon a failed depository institution’s
12 deposit account records to determine deposit insurance coverage. C.F.R. § 330.5. However,
13 where, as here, “the deposit account records are ambiguous or unclear on the manner in which the
14 funds are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit
15 account records of the insured depository institution for the purpose of establishing the manner in
16 which the funds are owned.” *Id.*

17 94. As set forth herein, in disallowing USVCP’s claim, FDIC made the arbitrary and
18 capricious determination to consider only the “account setup forms” for each of the Blocked
19 Accounts, as well as the sender information for SVB’s OFAC blocking reports.

20 95. FDIC abused its discretion in failing to consider other evidence provided by
21 USVCP’s representatives, which conclusively showed that the Blocked Accounts were set up
22 specifically for the benefit of USVCP. Such evidence includes, among other things: (1)
23 communications between USVCP’s representatives and SVB over the years consistently reflecting
24 the parties’ understanding that these accounts belonged to USVCP; (2) fund payment instructions
25 listing USVCP as the sole payee and beneficiary of the Account Funds; and (3) SVB’s OFAC
26 blocking reports showing the same.

27

28

1 Account Funds from SVB to another blocked account. Throughout these communications with
2 FDIC, Plaintiffs conveyed that USVCP was open to an amicable resolution and requested FDIC's
3 engagement. FDIC repeatedly delayed in responding and failed to offer paths to resolve or bring
4 clarity to Plaintiffs' rights.

5 104. After persistent non-response, FDIC finally provided USVCP's representatives
6 with deposit claim forms, but only over its blocked funds at *Signature Bank*. FDIC did not provide
7 the same forms necessary for USVCP to assert its claims over the Account Funds at SVB.

8 105. On August 23, 2024, a USVCP representative used the Signature Bank claim forms
9 to submit claims over the SVB-based Account Funds.

10 106. Nearly seven months later—and nearly two years after Plaintiffs' initial outreach—
11 on March 5, 2025, FDIC sent the Claim Denial Letter disallowing and denying USVCP's claim,
12 ignoring the information and evidence provided by Plaintiffs establishing USVCP's rights to the
13 Account Funds.

14 107. FDIC made this determination based solely on the consideration of the "account
15 setup forms" for each of the Blocked Accounts, as well as the sender information for SVB's OFAC
16 blocking reports.

17 108. FDIC's determination is not only erroneous, but also fundamentally unjust and
18 unconscionable. Before SVB failed in March 2023, SVB had consistently treated the Account
19 Funds as belonging to USVCP. Had it not failed, SVB would have continued to recognize
20 USVCP's ownership over the Account Funds. In fact, one day before its failure, SVB had already
21 agreed to transfer the Account Funds to USVCP's blocked bank account at Signature Bank
22 pursuant to the OFAC License.

23 109. FDIC itself has permitted the more than \$54 million transfers of USVCP's blocked
24 assets in Signature Bank pursuant to the same OFAC license.

25 110. USVCP should not be prejudiced by SVB's delay in transferring the Account Funds
26 pursuant to OFAC License. Nor should USVCP be prejudiced by SVB's ultimate collapse, or any
27 erroneous recordkeeping on which FDIC relies.

28

111. There is no genuine dispute as to the intent of Gawker and Immutable to transfer the Account Funds to USVCP. Immutable and Gawker paid USVCP the Account Funds in satisfaction of duly owed debts. There is a verifiable paper trail establishing these facts.

112. There is also no dispute that no other entity has made a competing or conflicting claim on the Account Funds. Immutable no longer exists to make such a claim on the funds, and Gawker has been restructured and made its payment to USVCP as part of satisfaction of a restructuring plan. On information and belief, both Immutable and Gawker have closed their SVB accounts.

113. The practical result of FDIC's determination will be that the Account Funds—which were indisputably paid to and intended for USVCP—will be held in limbo with no legal owner, with FDIC receiving and retaining the full benefit of funds and credits associated with the Account Funds at the expense of USVCP.

114. Such determination is against equity and good conscience.

115. WHEREFORE, Plaintiffs seek restitution in the full amount of the Account Funds, plus any and all further amounts to be proven at trial.

PRAYER FOR RELIEF

NOW WHEREFORE, Plaintiffs requests judgment as follows:

- a. Judgment in USVCP's favor and against FDIC on all causes of action alleged herein;
 - b. An order declaring that USVCP is entitled to possession and insurance coverage of the Blocked Accounts;
 - c. An order directing FDIC to permit Plaintiffs to transfer the full amount of funds associated with the Blocked Accounts to another blocked account at a separate financial institution, pursuant to the OFAC License;
 - d. Compensatory and punitive damages in an amount to be determined, plus pre-judgment and post-judgment interest, fees and costs against;
 - e. An award of Plaintiffs' costs and attorneys' fees as may be permitted by law;
- and

f. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby respectfully demand a jury trial.

Dated: April 29, 2025

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